
Appeal Decision

Site visit made on 10 December 2019

by A L McCooey BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2020

Appeal Ref: APP/W1850/W/19/3235053

Land South West of Wilton Lane, Wilton, Ross-on-Wye, Herefordshire, HR9 6AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Messrs Marcus and Edward Price against the decision of Herefordshire Council.
 - The application Ref 183187, dated 23 August 2018, was refused by notice dated 11 February 2019.
 - The development proposed is a development of 9 dwellings and access.
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Decision

1. The appeal is dismissed.

Background

2. The application is submitted in outline with means of access to be determined at this stage. I have taken account of the various reports and assessments submitted with the appeal proposal on behalf of the appellants and Council. The Council's delegated decision report sets out the sections of the National Planning Policy Framework of most relevance to the determination of this appeal at pages 11 to 14. I do not repeat them in this decision but rather refer to them as the relevant sections.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of this part of the Wye Valley Area of Outstanding Natural Beauty (AONB);
 - The effect of the proposal on the setting of Ross-on-Wye Conservation Area and Wilton Bridge, a Grade I listed building and Scheduled Ancient Monument and other listed buildings and heritage assets, including White Lion Inn and Wilton Court;
 - Whether satisfactory living conditions for the proposed dwellings can be achieved, with particular reference to traffic noise;
 - Whether a suitable mix of housing types can be achieved; and
 - whether a safe means of access can be provided.

Reasons

4. The site comprises part of a field adjacent to the A40 trunk road, which is separated from the settlement of Wilton by Wilton Lane. It is within the Wye Valley AONB, close to the river Wye. The site is accessed from Wilton Lane off the A40. The other end of Wilton Lane connects with the B4260, which is the main southern approach to Ross-on-Wye from the A40. Ross-on-Wye town centre is at a higher level with commanding views over the river and floodplain from various vantage points, such as the Prospect, a park near the Church.
5. The Council referred to the importance of the area in respect of John Kyrle and his establishment of the Prospect as a public garden with views out over Wilton. The walk west along the edge of the escarpment known as John Kyrle's Walk is one of the earliest surviving public walks in Britain. I have considered views from there and the riverside walks in my assessment of the visual impact and effect on heritage assets. I consider that the importance of Gilpin's 1782 tourist guide to the Wye valley relates to an appreciation of the area and its part in the foundation of the picturesque movement. I note the quotations from the book cited by the appellants. However, the River Wye, the floodplain and the area around the site are designated as part of the AONB and I assess the proposal on that basis.
6. The Council has assessed the 5-year housing land supply figure to be 4.05 years. The appellant queries that figure on the basis of uncertainty over the construction of a road scheme in Hereford city. No convincing evidence has been submitted to dispute the Council's figures, and I judge the 4.05 years supply figure to be accurate. The most relevant sections of the NPPF are paragraphs 7 on sustainable development and 11 – the presumption in favour of sustainable development; section 12 – good design; paragraph 172 states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs; and finally section 16 on Conserving and enhancing the historic environment, which sets out the approach to be taken when considering development proposals affecting heritage assets.

Effect on the character and appearance of this part of the AONB

7. I have considered the Herefordshire Core Strategy (CS) policies that were referred to by the Local Planning Authority and find them to be in broad conformity with the NPPF. As such they are material considerations to be taken into account in the determination of this application. Policy RA2 allows for housing in or adjacent to defined settlements including Wilton subject to compliance with several criteria. No settlement limits are defined, instead allocations will come forward as part of neighbourhood development plans (NDPs). The Bridstow NDP (which covers this area) is at a very early stage and is afforded little weight. Policy SS6 requires that proposals should conserve and enhance environmental assets that contribute to landscape, townscape and local distinctiveness, especially in AONBs. Policy LD1 – Landscape and Townscape requires development proposals to demonstrate that the character of the landscape and townscape and protection and enhancement of the setting of settlements and designated areas has been taken into account. Proposals should also conserve and enhance the natural, historic and scenic beauty of important landscapes and features, including AONBs and conservation areas; through the protection of the area's character. The protection of valued landscapes is also required under Policy LD3.

8. The site is adjacent to the existing built-up area of Wilton, where housing development may be acceptable under Policy RA2 subject to compliance with the criteria in the policy. I consider the most relevant criterion to be no. 3 which requires proposals to make a positive contribution to the surrounding environment and landscape setting. This echoes the terms of the other relevant policies SS6, LD1 and LD3 as well as the NPPF and the statutory duty to have regard to the primary purpose of AONBs (which is to conserve and enhance their natural beauty). Natural England in its consultation reply stresses the importance of assessing the application carefully against the above policies and guidance, as well as the statutory purpose of the AONB.
9. The noise and infrastructure constraints of the site have resulted in the site being reduced to part of an existing field, set back from the boundary with the A40. The form of development shown on the illustrative plans is a conventional cul-de-sac with dwellings arranged around a central access road. New planting of trees and hedgerows to supplement the existing vegetation is part of the proposal. I have carefully considered the landscaping proposals and the submitted landscape and visual impact assessment (LVIA). Whilst the LVIA represents a professional assessment of the proposal, the impacts of the proposal must be assessed by the decision-maker. To this end, I have visited the surrounding viewpoints and traversed the relevant public rights of way (PROW), such as John Kyrle's Walk and the riverside footpaths. I note from my site visits that these are very popular and well-used routes, comprising a pleasant circular walk from the centre of Ross-on-Wye.
10. I do not agree with the assessment's conclusions that the landscape and visual impact would be minor and moderate. The proposal would appear as an urban extension into part of a field from local views such as the riverside PROW. The A40 is a Trunk road running through countryside as well as built-up areas and cannot be said to be an urban feature that assists with the assimilation of the proposal into the built form. The roadside development to the north is separated from the proposal by some distance. In closer views it is also screened from view by vegetation. Wilton Lane and its wide highway verge provides a clear boundary to the existing development in Wilton. For these reasons, the reliance on the nearby A40 trunk road and existing development as factors assisting the site's ability to absorb change is misplaced in my view.
11. The site boundaries are currently quite open, especially the field boundary closest to the river. It would take some years for any significant screening effect from the proposed landscaping to be realised. I agree with the Local Planning Authority that the location and form of the proposed development and landscaping would also be incongruous features in the landscape. The proposal would be clearly visible from local viewpoints including important rights of way along the river nearby. It would be detrimental to the character of this area of countryside within the AONB.
12. The appellants have referred to two other approvals granted by the Local Planning Authority in the AONB (one on appeal); claiming that this demonstrates that development in the AONB is acceptable in principle on more prominent sites. No details of the circumstances of these approvals have been provided to enable a comparison to be made despite this being pointed out by the Council in its statement. I note that the appeal decision referred to was within a gap between two parts of a settlement some distance away and was not as such comparable to the appeal site. The appellants refer to historic

changes to the field boundaries in response to the Council's evidence. However, the proposal must be considered on its own merits and on the basis of the site as it exists.

13. I conclude on this issue that the proposal would be an incongruous form of development separated from the existing built form of Wilton by a road and extensive highway verge. The site is part of an existing field near the River Wye and the development would project into the AONB in a contrived and alien manner. This would not respect the character of the landscape within the AONB, the setting of the settlement or its environmental character. I note that the AONB Partnership objected to the proposal on the basis that it would run counter to the primary purpose of the AONB as set out above. The proposal would fail to maintain or enhance the natural beauty of the AONB. The harm caused to the landscape setting, visual appearance and character of the area means that the proposal would be contrary to CS Policies RA2, SS6, LD1 and LD3 and relevant parts of the NPPF.

Effect on the setting of listed buildings and Ross-on-Wye Conservation Area

14. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The boundary of the Ross-on-Wye Conservation Area is adjacent to the site. Section 72 of the above Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Wilton Bridge is a grade I listed building and scheduled ancient monument. The site is within the setting of the bridge when viewed from various important vantage points within Ross-on-Wye and along the river Wye.
15. The Council's evidence referred to the important role of Wilton as a gateway to the town of Ross-on-Wye. The open setting of Wilton as defined by the floodplain and lands along the river is an essential characteristic of the setting of the Conservation Area and nearby listed buildings especially the Bridge, the White Lion Inn and Wilton Court. The proposal would introduce a contrived form of development into the open setting of these heritage assets. This would be particularly the case from important and valued views from the riverside PROW nearby, where the Conservation Area, Bridge and other listed buildings would be seen in conjunction with the proposal as one travels along the river. The appellants have rather missed this point about the setting of heritage assets and rely solely on the fact that the site cannot be seen from the Bridge and other listed buildings, due to intervening built form and vegetation. Having considered all the evidence, I conclude that the proposal would have a detrimental impact on the setting of the Conservation Area and the listed Wilton Bridge as well as Wilton Court, the White Lion Inn and other listed buildings close to the bridge.
16. The proposal would result in less than substantial harm to the identified heritage assets. It would not preserve the setting of Wilton Bridge and the above listed buildings. As it would have a detrimental effect on the setting of the Conservation Area, it would not preserve or enhance its character or appearance. The proposal would fail to meet the statutory tests set out above. It would also be contrary to guidance in Section 16 of the NPPF and Policies SS6 and LD4 of the CS.

Effect on the living conditions of residents

17. The Council has referred to CS Policy SD1, NPPF and the accompanying Planning Policy Guidance (PPG) on safeguarding residents from adverse noise effects. PPG states that acoustic design needs to be considered early in the planning process to ensure that the most appropriate and cost-effective solutions are identified from the outset. PPG confirms that the decision-maker should consider whether or not adverse (or significant adverse) effects are occurring or likely to occur and whether or not a good standard of amenity can be achieved. It is clear that the potential impacts of noise from major roads is a material consideration to be taken into account including at outline stage. In response to these issues the appellants commissioned noise assessments and an acoustic design statement, which have been reviewed by the Council's environmental health officers. The results of the noise survey and information from Highways England show that the development would be affected by noise from the A40 nearby. The appellants have investigated the possible provision of a bund/sound barrier along the boundary, but this would not be a feasible solution. This is accepted by the Council.
18. It is common ground that the identified noise impacts on garden areas can be suitably mitigated for by the provision of 1.8m high acoustic fencing to plot boundaries. The proposed mitigation of noise effects on the dwellings is by means of the building envelope i.e. keeping windows closed at all times and the use of mechanical ventilation. PPG states that more specific factors to consider include: whether any adverse internal effects can be completely removed by closing windows and, in the case of new residential development, if the proposed mitigation relies on windows being kept closed most of the time: the effect this may have on living conditions. The Council's concern is the effect of having to keep windows closed at all times on the residents' living conditions.
19. The Council relies on ProPG: Planning and Noise (hereinafter referred to as ProPG), which is professional practice guidance endorsed by professional bodies for noise consultants, acoustics and environment health. This guidance is referred to in PPG, but the document itself makes it clear that it is not an official code of practice or interpretation of the law or government policy. The Council quotes from ProPG that most residents value the ability to open windows at will and Local Planning Authorities should therefore normally seek to ensure that noise standards are met with windows open. However, the next paragraph recognises that there may be justification for relaxing this requirement at sites adjacent to transportation noise sources. The Council has not referred to this paragraph. It relies on the Environment Health Officer's comments that mechanical ventilation is not suitable on greenfield sites.
20. I consider that the Local Planning Authority has applied guidance rigidly in this case. It is agreed that the appropriate standards can be met with the windows closed. No concern has been raised with the principle of mechanical ventilation as this would be addressed under the building regulations. The appellants have confirmed that the windows may be opened if residents chose to do so. The Council's approach is not supported by any government policy and relevant guidance appears to suggest that the appellants' approach may be acceptable in sites such as this that are close to major roads. Finally, the appellants have indicated that features could be considered in the detailed design of the dwellings to further reduce noise effects. In all these site-specific circumstances, I conclude that the noise effects have been properly considered

and an acceptable standard of amenity could be achieved. The effects of noise on the proposed development should not weigh against the proposal.

21. As I have concluded that the effects of noise are not a reason to refuse planning permission in this case, I do not need to consider the other example of an approval in similar circumstances that was referred to by the appellants.

Whether a suitable mix of housing types can be achieved

22. CS Policy H3 requires that residential developments provide an appropriate range and mix of housing units which can contribute to the creation of balanced and inclusive communities. It then sets out criteria which will apply in particular, on larger housing sites of more than 50 dwellings. The application is in outline with matters of layout, scale and appearance reserved for subsequent approval. The Council accepts that further information could have been sought to address this matter but was not. An appropriate housing mix could also have been sought by condition in the event that planning permission were to be granted: a fact which the Council acknowledges. Indeed, such a condition has been included in the Council's list of suggested conditions. This matter is not therefore a proper reason to refuse planning permission in this case. This being my conclusion, I therefore do not consider the other approval that was referred to by the appellants any further.

Highway Safety

23. I note that significant concerns were raised with the proposed access arrangements in terms of the junction of Wilton Lane with the B4260 Wilton Road, the adequacy of Wilton Lane in terms of width and alignment, flooding of Wilton Lane and the junction with the A40. Highways England has considered the impacts on the A40 Trunk road and has no objection to the proposal. Wilton Lane occasionally floods and the only exit at these times would be onto the A40, where vehicles must turn left (west) and negotiate some distance before being able to turn right (east). This is an existing situation that applies to the dwellings on Wilton Lane and is not considered to be a reason to refuse planning permission. Highways England completed an assessment of this matter before deciding to close the central barriers and prevent a right turn out of Wilton Lane and found the distance to be reasonable. The local highway authority carefully considered the proposal and objections received. It had no objection subject to minor improvements to the Wilton Lane/ B4260 junction and funding to review the speed limits on Wilton Lane. These improvements related to works within the highway boundary that could be required by conditions. The appellant also submitted a unilateral undertaking to provide funds to meet the Highway Authority's costs for processing an application for the amendment of the speed limit on Wilton Lane. I afford this undertaking weight in the context of this issue, however, as I am dismissing the appeal for other reasons, I give it no further consideration.

Other matters

24. As noted above, Wilton Lane floods to the south of the site. There was no evidence that the area near the site floods or that the proposal would affect flooding on Wilton Lane. I agree with the Local Planning Authority that this issue is not a reason to refuse planning permission. The relevant consultees had no objection to the proposed drainage arrangements, which could be secured by conditions. The proposal would overload the local waste water treatment works. Improvements to the works are due to be completed by March 2020, which would address this issue.
25. The site lies within the catchment of the River Wye, which is a Special Area of Conservation (SAC). The development has the potential to affect the features of interest of the SAC. The Local Planning Authority undertook an Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017. The conclusion reached was that the proposal would not result in adverse effects on the integrity of the SAC. Natural England has considered the AA and the proposed measures to mitigate for all identified adverse effects that could potentially occur as a result of the proposal. Natural England concurs with the AA conclusions and has no objection subject to the proposed mitigation measures being secured by conditions. As I am dismissing the appeal, I take no further action on this issue.

Conclusion

26. I have taken the provisions of paragraph 11 (d) of the NPPF into account in reaching my decision. I consider that the proposal conflicts with the provisions of the development plan taken as a whole. I have concluded above that the relevant policies of the development plan are not out of date. The proposal conflicts with policies RA2, SS6, LD1 and LD3 due to the adverse impacts it would have on the character and appearance of the area and the AONB. The adverse impacts on the setting of listed buildings and the Conservation Area means that the proposal conflicts with Policies SS6 and LD4 of the CS. The proposal also conflicts with NPPF policies in respect of the protection of AONBs and the conservation of the setting of heritage assets. As there are such conflicts footnote 6 makes it clear that the presumption in favour of sustainable development set out in paragraph 11 (d) of the NPPF do not apply.
27. The appellants claim that the AONB partnership has incorrectly referred to caselaw on this point because the case related to very different site specifics. I disagree with the appellants and consider that the caselaw reference is correct. The site specifics are not relevant to the point of law.
28. I note that the transport statement sets out the local amenities as follows: public house – 410m, bus stops 450m and garage/convenience store 550m. The full range of facilities in Ross-on-Wye are around 1.5km away. The site is in a reasonably sustainable location with some local facilities and a bus service. It is likely that residents would still use cars for school and shopping trips. I have considered the Council's appraisal of the proposal against the three objectives of sustainable development set out in the NPPF. The conclusion is that there would be modest economic and social benefits associated with the proposal and this has not been convincingly challenged by the appellants.

29. I afford weight to the modest contribution that the proposal would make to addressing the shortfall in housing land supply. I also take into account the benefits of the proposal in terms of sustainable development, landscaping of the site, access and highway improvements, and proposed ecological enhancements. The identified harm that would be caused to the character and appearance of the area within an AONB and the setting of heritage assets, significantly outweighs the benefits of the proposal.
30. Having taken account of all the matters raised, I conclude that the appeal should be dismissed for the reasons given above.

A L McCooey

Inspector